Supreme Court, U.S.
FILED
JUL 14 1988
JOSEPH F. SPANIOL, JR.
CLERK

No. 87-1896

In The

Supreme Court of the United States

October Term, 1987

JEROME B. ROSENTHAL,
Appellant,

vs.

THE STATE BAR OF CALIFORNIA,
Appellee,

On Appeal from
the Supreme Court of California

APPELLANT'S BRIEF OPPOSING APPELLEE'S MOTION TO DISMISS OR AFFIRM

(Rule 16.5)

JEROME B. ROSENTHAL
Suite 800
6535 Wilshire Boulevard
Los Angeles, CA 90048
(213) 658-6411
(213) 276-9673

Appellant, Pro Se

TABLE OF CONTENTS

		Page
I.	MOTION TO DISMISS OR AFFIRM IS UNTIMELY	1
	1. LAST DOCUMENT RULE	2
	2. MAY 18 DATE CANNOT BE EXTENDED BY THE "LAST DOCUMENT RULE"	2
	3. MOTION IS TOTALLY DEFECTIVE	3
II.	APPELLEE'S "STATEMENT OF THE CASE" IS MISLEADING, INACCURATE AND DECEIVING	4
III.	CALIFORNIA SUPREME COURT'S LAST DENIAL OF REHEARING ON FEB. 18, 1988 IS CONTROLLING; THIS APPEAL IS TIMELY	6
IV.	MOTION'S ARGUMENTS, PAGES 20-32, IGNORE QUESTIONS IN JURISDICTIONAL STATEMENT, AND ADDRESS STATE QUESTIONS ONLY	8
V.	MOTION SPURIOUSLY RECASTS APPELLANT'S ATTACK ON STATUTE WHICH SHIFTS TO ACCUSED (APPELLANT) BURDEN OF DISPROVING STATUTORILY-PRESUMED WRONGDOING, AND DECEPTIVELY CONCEALS WELL-ESTABLISHED FACT-FINDING ROLE OF CAL. SUPREME COURT	9
CONCLUSION		10
LIST OF APPENDICES		11
APPENDICES		see following page

TABLE OF AUTHORITIES

	Page(s)
Cardona v. Quinones (1916) 240 U. S. 83	7
Davis vs. Wechsler (1923) 262 U. S. 22	7
Dept. of Banking vs. Pink (1942) 317 U. S. 264, 63 S. Ct. 233, 235	6
FTC vs. Minneapolis-Honeywell (1952) 344 U.S. 206, 73 S. Ct. 245, 249	6
Herrscher vs. State Bar (1935) 4 C.2d 399, 401, 49, P.2d 832	9
U. S. vs. Gomez (1865) 70 S. Ct. (Wall) 752	7
RULES - U.S. SUPREME COURT	
16	1,2,3
16.1	3
16.2	2,3
28	4
28.2	3
28.5(a)	4
28.5(b)	4
28.5(c)	4
42.3	4

No. 87-1896

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1987

JEROME B. ROSENTHAL, Appellant

v.

STATE BAR OF CALIFORNIA, Appellee

ON APPEAL FROM THE SUPREME COURT OF CALIFORNIA

APPELLANT'S BRIEF OPPOSING APPELLEE'S MOTION TO DISMISS OR AFFIRM

I

MOTION TO DISMISS OR AFFIRM IS UNTIMELY

Rule 16 states, in relevant part:

> ".1. Within 30 days after receipt of the jurisdictional statement,..., the Appellee may file a motion to dismiss, or a motion to affirm...."

Appellee's "Motion to Dismiss or Affirm" (herein "Motion") was received for filing no sooner than July 8, 1988, as will appear below in Par. 3 of this Section I.

1. "LAST DOCUMENT RULE"

Jurisdictional Statement was filed May 13, 1988; completed May 18, 1988. (App. 1.)

Rule 16.2 provides:

"The Clerk shall not accept a motion...that does not comply with this Rule...."

Motion is out of time; latest time expired June 18, 1988, and must be rejected.

2. May 18 date cannot be extended by the "last document rule." Here, the last filing, June 2, 1988, was merely the Opinion below, (App. 2-A) filed in Court below July 13, 1987 (App. 2-B), copy served on Appellee by Court below, on July 13, 1987 (App. 2-C). The purpose of the "last document rule" is to insure that party moving to dismiss is fully informed of all matters comprising the Jurisdictional Statement (herein "J.S.") before time for motion starts to run under Rule 16. Appellee had a copy of the Opinion below since July 1987. There was nothing "new" that Appellee learned by its receipt of "Supplemental Appendix" (App. 2-A) in June,

1988-it was the identical document as the one received July 1987.Thus, Appellee's Rule 16 time commenced when Appellee received App. 1 (May 18, 1988 filing),and expired no later than June 18-20, 1988 (App. 3).The Motion,filed June 30/July, 1988 is too late. Rule 16.2.

3. Motion is Totally Defective

First, Appellant received in the mail from San Francisco on July 8, 1988; and was so stamped in regular course of business.(Apps. 4 and 4A.) A fortiori, the Motion if mailed to Court (Washington, D.C.) when and as mailed to Appellant (Los Angeles) could not reach Court sooner than it reached Appellant (7/7/88).

Second, since July 8 filing is per se "out of time" [even assuming, arguendo, that June 2 is start of the 30-day period (Rule 16.1)], Appellee violated Rule 28.2 by not filing a "notarized statement by a member of the Bar of this Court"..."stating that to his knowledge the mailing (to this Court) took place on a

particular date within the permitted time." The required affidavit (notarized statement) exists nowhere on the record.

Third, there is no compliance with any of Rules 28.5(a), (b) or (c) or 42.3. "Declaration" appearing after page 38 of Motion is not "affidavit" required by Rule 28.5(c), Rule 42.3, and Rule 28. Thus, since Motion is either too late, void for non-compliance with Rules, or both, it is unnecessary to consider pages 2-38; if Court agrees, it is also unnecessary to consider the following portion of this brief opposing Motion, except for CONCLUSION.

II

APPELLEE'S "STATEMENT OF THE CASE" IS MISLEADING, INACCURATE AND DECEIVING

References below are to the Motion; comments, e.g. "should read" means inconsistent material, presently in Motion, should be deleted.

(a) Page 2 should read: "rehearing denied, Feb. 18, 1988" (App. No. 1).

(b) Page 2 under "State Bar Proceedings", the Complaint was filed in Dec. 1968.

(c) Pages 3 and 4: No delay (except minuscule sick days) attributable to Appellant, excluding attempts to procure appointment of counsel, and for constitutional attacks on California statutes or their application. J.S., pp. 27-32.

(d) Page 6 should read: "...transcripts were initially admitted for limited purpose; later all transcripts admitted for all purposes, over objections on constitutional grounds."

(e) Pages 6, 7 should read: "No evidence before Hearing Panel of full opportunity to cross-examine; only evidence before Panel was uncontradicted testimony to the exact opposite." Fn. 4, p. 7, should read "Appellant was prevented from presenting evidence in his defense by Committee-caused delays and its false promises."

(f) Pages 8-11 should be deleted entirely,

as not responsive to any of the Questions in J.S., all federal and substantial. Those pages are excerpts from and references to Opinions and expressions from extraneous civil proceedings, from Appellee's briefs of state questions in state tribunals, from administrative recommendations, and from Opinion below. Those pages are an irrelevant and meaningless "red herring."

III

CALIFORNIA SUPREME COURT'S LAST DENIAL OF REHEARING ON FEB. 18, 1988 IS CONTROLLING; THIS APPEAL IS TIMELY

1. Appellee's reliance on FTC vs. Minneapolis-Honeywell (1952) 344 U.S. 206, 73 S. Ct. 245, 249, and on Dept. of Banking vs. Pink (1942) 317 U. S. 264, 63 S. Ct. 233, 235 is misplaced. Those cases are distinguishable from our case; they teach that a subsequent and meaningless order which does not change the "final" judgment in any significant way, will not extend the date of that final judgment. But, here, the "subsequent" (last)

Order, Cal. Supreme Court, Feb. 18, 1988 (App. 3 to J.S.) denying rehearing significantly and materially alters the legal rights as determined by earlier order (void, signed by disqualified Justice, Sept. 2, 1987) (App. 8 to J.S.) or by "expiration" of rehearing time earlier decided Aug. 6,1987 (App. 7 to J.S.). The respect in which the last Order (Feb. 18, 1988) affected Appellant's rights is that it deprives Appellant of fundamental and constitutionally derived, vested right of Appeal to this Court. Also see J.S., pp. 57-61, citing on p. 60 controlling policy of this Court, viz. **Davis vs. Wechsler** (1923) 263 U. S. 22; **Cardona vs. Quinones** (1916) 240 U. S. 83; **U. S. vs. Gomez** (1865) 70 S. Ct. (Wall) 752 [Citation incorrect, p. 60 of J.S.]

For accuracy, these corrections must be made: Appellee's statement (pp. 18, 19) that Appellant's contentions have been litigated in the Court systems of at least three states is strongly misleading. None of Appellant's

contentions **before this Court** has ever been litigated in any state outside of California. Also, Cal. Supreme Court's last (and controlling) denial of rehearing occurred on Feb. 18, 1988 and **not** on Sept. 11, 1987, as stated on p. 19 of the Motion.

IV

MOTION'S ARGUMENTS, PAGES 20-32, IGNORE QUESTIONS IN JURISDICTIONAL STATEMENT, AND ADDRESS STATE QUESTIONS ONLY

1.Pages 20-23 ("B")deal with record in Bar proceeding and underlying civil litigation, as justifying disbarment.No mention whatsoever is made concerning the 22 federal constitutional questions before this Court.

2. Pages 23-29 ("C") deal with federal generalities and conclusions, but again refer to state law principles, and never address any of the 22 questions before this Court.

3.Pages 29-32 ("D") are only observations, none of which addresses any of the specific federal questions before this court.

MOTION SPURIOUSLY RECASTS APPELLANT'S ATTACK ON STATUTE WHICH SHIFTS TO ACCUSED (APPELLANT) BURDEN OF DISPROVING STATUTORILY-PRESUMED WRONGDOING, AND DECEPTIVELY CONCEALS WELL-ESTABLISHED FACT-FINDING ROLE OF CAL. SUPREME COURT

1. In disciplinary attorney cases, the Cal. Supreme Court acts as fact-finder, de novo. That court examines the entire record, weighs the evidence and makes its independent determination. Herrscher vs. State Bar (1935) 4 C.2d 399, 401, 49 P.2d 832.

In conceding the statutory policy (burden on accused to prove innocence) the Motion's position ignores the de novo and independent fact-finding role, unquestionably established as vested in Cal. Supreme Court. The presumption of innocence is singularly applicable in Cal. Supreme Court's de novo determination of disciplinary proceedings, indisputably quasi-criminal. Herrscher vs. State Bar (1935) 4 C.2d 399, 403, 421.

2. Page 36 of Motion improperly attributes blame for 19 years' to Appellant; the opposite is true: the greatest portion of

delay was occasioned by Appellee's unconstitutionally-applied statutes, and resistance to Appellant's efforts to procure appointed counsel.

3. Again, Motion (pp. 36, 37) repeats in generalities its characterization gleaned from state bodies, and specifically ignores the federal constitutional questions now before the Court.

CONCLUSION

1. The Motion should be denied as untimely, or as defective in violation of Rules.

2. The thrust of the Motion addresses only State procedures and principles grounded on state law, thus ignoring the substantial federal constitutional questions--as though ignoring them will make them disappear.

The Court should note jurisdiction, and calendar the case for briefing and argument.

July 13, 1988.

JEROME B. ROSENTHAL
Appellant, Pro Se

LIST OF APPENDICES

LIST OF APPENDICES

No.	Description
1	Face Sheet of Jurisdictional Statement filed May 13, 1988, completed May 18, 1988
2-A	Face sheet, Supplemental Appendix to Jurisdictional Statement re: California Supreme Court "Opinion"
2-B	Face Sheet of California Supreme Court "Opinion", filed July 13, 1987
2-C	Proof of Service re: California Supreme Court "Opinion" in matter entitled Rosenthal v. State Bar of Calif., L.A. 32260
3	Affidavit of Service re: Jurisdictional Statement, dated May 17, 1988
4	Face Sheet, Appellee's Motion To Dismiss or Affirm, received by Jerome B. Rosenthal, July 8, 1988
4-A	Affidavit of Bonnie Dantzscher, dated July 13, 1988 re: receipt of Appellee's Motion to Dismiss or Affirm

APPENDIX 1

FACE SHEET OF JURISDICTIONAL
STATEMENT FILED MAY 13, 1988,
COMPLETED MAY 18, 1988

RECEIVED MAY 23 1988

RECEIVED
MAY 13 1988
OFFICE THE CLERK
SUPREME COURT, U.S.

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1987

JEROME B. ROSENTHAL, Appellant

v.

STATE BAR OF CALIFORNIA, Appellee

ON APPEAL FROM THE SUPREME COURT OF CALIFORNIA

JURISDICTIONAL STATEMENT

JEROME B. ROSENTHAL
Suite 800
6535 Wilshire Blvd.
Los Angeles, CA 90048
(213) 658-6411
(213) 276-9673
Appellant, in Pro Se

APPENDIX 1

APPENDIX 2-A

FACE SHEET, SUPPLEMENTAL APPENDIX TO JURISDICTIONAL STATEMENT RE: CALIFORNIA SUPREME COURT "OPINION"

No. 87-1896

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1987

JEROME B. ROSENTHAL, Appellant

v.

STATE BAR OF CALIFORNIA, Appellee

ON APPEAL FROM THE SUPREME COURT OF CALIFORNIA

SUPPLEMENTAL APPENDIX TO JURISDICTIONAL STATEMENT

RECEIVED
HAND DELIVERED
JUN 2 - 1988
OFFICE OF THE CLERK
SUPREME COURT, U.S.

JEROME B. ROSENTHAL
Suite 800
6535 Wilshire Blvd.
Los Angeles, CA 90048
(213) 658-6411
(213) 276-9673
Appellant, in Pro Se

APPENDIX 2-A

APPENDIX 2-B

FACE SHEET OF CALIFORNIA SUPREME COURT

"OPINION", filed July 13, 1987

SUPREME COURT

F I L E D

JUL 13 1987

Laurence P. Gill, Clerk

Deputy

C O P Y

IN THE SUPREME COURT OF THE
STATE OF CALIFORNIA

JEROME B. ROSENTHAL, Petitioner,	)	
v.	)	L.A. 32260
THE STATE BAR OF CALIFORNIA, Respondent.	)	

BY THE COURT:

This is a proceeding to review the unanimous recommendation of the Review Department of the State Bar Court (Review Department)[1] that petitioner Jerome B.

[1]The phrase State Bar Court shall be used herein to refer to the conjunction of the Hearing Panel and Review Department.

* Before Broussard, J., Panelli, J., Arguelles, J., Eagleson, J., Kaufman, J., Lillie, J., ** Spencer, J.**

** Court of Appeal, Second Appellate

APPENDIX 2-C

PROOF OF SERVICE RE: CALIFORNIA SUPREME COURT "OPINION" IN MATTER ENTITLED ROSENTHAL v. STATE BAR OF CALIF., L.A. 32260

ROSENTHAL v. STATE BAR OF CALIF.

L.A. 32260

COUNSEL FOR PARTIES:

FOR PETITIONER: Jerome B. Rosenthal
6535 Wilshire Blvd. #800
Los Angeles, CA 90048
(213) 658-6411

FOR RESPONDENT: Richard J. Zanassi
State Bar of California
555 Franklin Street
San Francisco, CA 94102
(415) 561-8200

* * *

EXHIBIT 2-C

APPENDIX 3

AFFIDAVIT OF SERVICE RE: JURISDICTIONAL STATEMENT, DATED MAY 17, 1988

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1987

JEROME B. ROSENTHAL, Appellant

v.

STATE BAR OF CALIFORNIA, Appellee

ON APPEAL FROM THE SUPREME COURT OF CALIFORNIA

AFFIDAVIT OF SERVICE RE

JURISDICTIONAL STATEMENT

JEROME B. ROSENTHAL
Suite 800
6535 Wilshire Blvd.
Los Angeles, CA 90048
(213) 658-6411
(213) 276-9673
Appellant, in Pro Se

I. MICHAEL FORD, being duly sworn, aver:

1. I am the assistant and secretary to

1. I am the assistant and secretary to JEROME B. ROSENTHAL, Appellant herein. My business address is 6535 Wilshire Boulevard, Suite 800, Los Angeles, California 90048.

2. On May 17, 1988, I deposited in the U.S. Mails, first class, postage fully prepaid three copies of the Jurisdictional Statement in the above-entitled case, and mailed three copies to each of the following:

THE STATE BAR OF CALIFORNIA
1230 West Third Street
Los Angeles, California 90017

HERBERT M. ROSENTHAL
TRUITT A. RICHEY, JR.
RICHARD J. ZANASSI
THE STATE BAR OF CALIFORNIA
555 Franklin Street
San Francisco, California 94102

3. All parties required to be served herein have been thus served as above.

Executed on May 17, 1988 at Los Angeles, California

/s/ Michael Ford
Michael Ford
Affiant

On this 17th day of May 1988, there appeared before me Michael Ford, personally known to me, who signed this Affidavit as Affiant, before me this 17th day of May 1988.

/s/ Jeffrey P. Samuels
JEFFREY P. SAMUELS
Notary Public in and for the State of California, County of Los Angeles

OFFICIAL SEAL
JEFFREY P. SAMUELS
NOTARY PUBLIC - CALIFORNIA
LOS ANGELES COUNTY
My Comm.Expires Aug.24,1988

APPENDIX 4

FACE SHEET, APPELLEE'S MOTION TO DISMISS OR AFFIRM, RECEIVED BY JEROME B. ROSENTHAL, JULY 8, 1988

RECEIVED JUL 8 1988

No. 87-1896

In The

Supreme Court of the United States

October Term, 1987

JEROME B. ROSENTHAL,
Appellant,

vs.

THE STATE BAR OF CALIFORNIA
Appellee.

On Appeal from
the Supreme Court of California

MOTION TO DISMISS OR AFFIRM

DIANE C. YU
TRUITT A. RICHEY, JR.*
RICHARD J. ZANASSI
Attorneys at Law
555 Franklin Street
San Francisco, California 94102
(415) 561-8200

Attorneys for Appellee

*Counsel of Record

APPENDIX 4

APPENDIX 4-A

AFFIDAVIT OF BONNIE DANTZSCHER, DATED JULY 13, 1988 RE: RECEIPT OF APPELLEE'S MOTION TO DISMISS OR AFFIRM

AFFIDAVIT

I, BONNIE DANTZSCHER, being duly sworn on oath depose and say:

1. I am and for some years have been assistant and secretary to JEROME B. ROSENTHAL, the Appellant in the case now pending in the Supreme Court of the United States, Case No. 87-1896, entitled Jerome B. Rosenthal, Appellant vs. The State Bar of California, Appellee.

2. One of my regular duties, which I discharge in the ordinary and regular course of business, is to receive and open all incoming mail addressed to Mr. Rosenthal, stamp it with his name and the date of its receipt at the office of Mr. Rosenthal (which is where I work) at 6535 Wilshire Boulevard, Los Angeles, California.

In the mail that arrived at Mr. Rosenthal's office on July 8, 1988 was a copy of the "Motion to Dismiss or Affirm" which arrived in the mail from the State Bar

of California at 555 Franklin Street, San Francisco, California. The cover page of that document is Appendix 4, to Appellant's brief opposing Appellee's Motion to Dismiss or Affirm, to which this Affidavit will be Appendix 4-A.

3. Upon the receipt of the "Motion to Dismiss or Affirm" (booklet) I, as I always do in dealing with incoming mail, affixed by rubber stamp Mr. Rosenthal's name and the date of receipt which reads "Received July 8, 1988", the actual date of the receipt.

I clearly remember the circumstances because of the unique-ness of the situation, and because of the importance to Mr. Rosenthal. As soon as the Motion to Dismiss or Affirm came in and as soon as I stamped it (in keeping with my custom and practice), I took it in to Mr. Rosenthal and commented on the tardiness of its

arrival. I had earlier discussed with Mr. Rosenthal the fact that Appellee's time for filing such a motion had fully expired, since the completed copy of the Jurisdictional Statement was sent to the State Bar of California (Appellee) on May 17, 1988. (Appendix 3)

4. I have personal knowledge of all of the statements made above and facts contained in them, and if called upon as a witness could and would competently testify thereto. All of the statements made in this Affidavit are true and correct, to my personal knowledge.

Executed on July 13, 1988 at Los Angeles, California.

Bonnie Dantzscher
Affiant

On this 13th day of July, 1988, there appeared before me Bonnie Dantzscher, personally known to me, who signed this

Affidavit as Affiant, before me this 13th day of July 1988.

JEFFREY P. SAMUELS
Notary Public in and for
the State of California,
County of Los Angeles